**U.S. Department of Homeland Security**
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

**U.S. Citizenship and Immigration Services**

B5

[redacted]

DATE: DEC 28 2011 OFFICE: NEBRASKA SERVICE CENTER [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks to classify the beneficiary pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions with postbaccalaureate experience equivalent to an advanced degree. The petitioner, a manufacturer of high performance communication products, seeks employment as a regression test engineer. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the beneficiary qualifies for classification as a member of the professions with the equivalent of an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel and copies of previously submitted exhibits.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a bachelor's degree and post-baccalaureate experience equivalent to an advanced degree under the U.S. Citizenship and Immigration Services (USCIS) regulations at 8 C.F.R. §§ 204.5(k)(2) and (3)(i)(B). The director did not dispute that the petitioner qualifies as a member of the professions with the defined equivalent of an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the

Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now USCIS] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

*Matter of New York State Dept. of Transportation* (*NYSDOT*), 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on February 3, 2010. In an accompanying letter, [redacted] the petitioner's immigration case manager, stated:

> We have offered [the beneficiary] a permanent position as a Regression Test Engineer, where he would continue to be involved in ensuring the overall quality of our company's products. [The beneficiary] has been integrally involved in the

development and testing phases of valuable routers that lie at the heart of high speed networks critical to the United States economy and companies across the nation. This position requires [the beneficiary's] expertise. . . .

[The petitioner] designs, develops, and sells products and services that provide network infrastructure, which creates environment for accelerating the deployment of services and applications over a single Internet Protocol (IP) based network. . . .

[The beneficiary] is responsible for the following:

- Working with Product Lifecycle Management software/hardware team to ensure overall quality of company products;
- Developing feature test plans;
- Designing, executing and automating test suites, reporting product defects and verifying fixes;
- Communicating test results to engineering and cross-functional teams; and
- Supporting beta testing and various customer issues.

. . . As demonstrated by his past record of original scientific research and noteworthy work for distinguished companies, his academic distinctions and honors, and three letters of reference from experts in the field, [the beneficiary's] continued employment in the U.S. will provide significant future benefits to the national economy and companies across the nation. . . .

[The beneficiary's] work on the overall quality and reliability of integral networking products is of substantial intrinsic merit because it (1) improves the U.S. economy by ensuring the quality of [the petitioner's] products in a competitive international market and (2) benefits U.S. companies by reducing costs, increasing employee output and improving working conditions with faster, more reliable and more secure private and public networks. . . .

The benefits of [the beneficiary's] important work in network infrastructure quality assurance span the entire nation and are not limited in geographic scope. [The petitioner's] market success has a significant positive impact on the U.S. economy as a whole, generating taxable revenue and international acclaim for U.S. technological research and development.

In addition, it is difficult to think of an industry today that is not dependent upon the Internet and the telecommunication industry. [The petitioner's] products form the basis of networks across the nation, essential for the functions and applications of numerous U.S. companies across myriad industries. The cost-effectiveness, efficiency and reliability of these networking infrastructure products, as tested and

> improved upon through [the beneficiary's] work, are benefiting U.S. companies nationwide. . . .
>
> Finally, [the beneficiary's] work serves the national interest to a substantially greater degree than a similar, minimally qualified worker because he has extensive proven expertise in software and hardware testing, which he has already been applying as part of [the petitioner's] test engineering team. . . .
>
> [The beneficiary] is an accomplished software engineer who stands out in his field based on his particular expertise and experience in developing and executing testing plans for network hardware and software. . . . [The beneficiary] has already made valuable contributions to the field of network infrastructure technology and continues to conduct critical testing of products today. . . .
>
> [The beneficiary] has a proven track record of success in network infrastructure product testing. Prior to joining [the petitioning company], . . . as early as 2003 he developed and executed various test plans, verification testing and automation scripts and mentored Hardware Product Verification Test Engineers for [redacted]. [The beneficiary] then designed and developed Hardware Product Verification synchronization feature Automation Software for [redacted]. He further developed his expertise again at [redacted] where he returned to mentor newer employees in the Multi Service Transport System. His work ensured that each company's hardware and software delivered the highest performance possible.
>
> In his present role at [the petitioning company], [the beneficiary's] unique expertise in testing network infrastructure products is of tremendous value in ensuring the quality of innovative multi-chassis routers. His extensive knowledge of testing design, development, execution and documentation has been a critical component of [the petitioner's] advancement and successes in the field.

The petitioner submitted copies of various internal awards and certificates that [redacted] presented to the beneficiary during his employment there. The record contains no background information about the significance of the awards.

Three witness letters accompanied the initial submission. [redacted], stated:

> I have known [the beneficiary] in the capacity [of] a manager of his project team at [redacted] [The beneficiary] made invaluable contributions towards the development of test plans, system software verification testing and automation script development for [redacted] Multi Service Transport System based on ANSI [and] ETSI standards. His work was of great value to the nation, as the critical

bugs reported by [the beneficiary] ensured that the quality of the software was never compromised, leading to stable and reliable customer deployment and hence a stable and reliable Network as a whole.

[The beneficiary] has a special knack for churning out top-notch automation scripts, and the ease with which he generated efficient algorithm designs is especially noteworthy. For instance, [the beneficiary] developed ingenious automatic report generation software for the hardware product verification team at [redacted] This unprecedented software reduced the report generation time from 4 weeks to a few seconds. Needless to say, the team has been using his software as an indispensable tool to generate their test reports ever since. . . .

[The beneficiary] developed an innovative web based training software [redacted] fresh entrants. . . . Later, this software also played a pivotal role in training the entire Business unit for [redacted] In addition, [the beneficiary's] contribution towards organizing technical training sessions and his creative agendas for formal and informal interactions helped the trainees blend into the team culture and processes smoothly.

[redacted] senior product manager at [redacted] stated:

I lead [*sic*] [the beneficiary] in some of the projects for the Software Validation and Test Team for the Optical Transport Business Unit at [redacted]. As part of the project he interacted with a host of [redacted] people in various teams across the company. He was uniformly recognized as a stellar engineer by everyone he touched. . . .

His most important/substantial contribution came about in [redacted] where he developed a web based reporting software for the Hardware Product Verification team which reduced the reporting time from a month[']s time to a matter of seconds.

. . . His strong knowledge of quality processes and drive for excellence led to the innovation and development of multiple tools such as Weekly Status reporting. [The beneficiary] displayed tremendous character in putting additional add-ons to make the tool extremely efficient. As always, he evaluated and experimented with available options and came out with a solution which is still in use and was later replicated across other teams.

The third witness, identified by the single name [redacted] is a distinguished member of technical staff at [redacted] like the other witnesses, was formerly one of the beneficiary's superiors at [redacted] asserted that the beneficiary's development of "Automation framework for hardware testing of our product . . . was just excellent." The witness added that the company had

estimated that "3-4 people" would take six months to complete the job, but the beneficiary completed it by himself "within a period of 5 odd months."

On April 2, 2010, the director instructed the petitioner to "submit documentary evidence to establish that the benefits of the beneficiary's proposed employment will be national in scope," and "that the beneficiary has a past record of specific prior achievement that justifies projections of future benefit to the national interest." The director specified that the petitioner "must demonstrate, to some degree, the beneficiary's influence on the field of employment as a whole."

In response, counsel stated that the beneficiary's work is national in scope because he "plays a critical role in the development of hardware and software products that form the backbone of the Internet." Counsel also asserted that the beneficiary "is uniquely qualified to work in the area of high-speed network infrastructure technology" owing to his "more than six years of professional experience" and "particular expertise in development and verification of hardware and software products." Counsel cited the beneficiary's "his seven (7) awards granted from [redacted] the three previously submitted witness letters, and a new letter.

[redacted] who works at [redacted] in an unspecified position, worked with the beneficiary for a year and a half. He stated:

> [The beneficiary] was a part of the onsite team from [redacted] working with [the] [redacted] team here in Petaluma. He automated the Test Suite for the Wireline Synchronization test, which eliminated the need for manual hardware testing. His Software suite . . . not only reduced the [testing] time from weeks to a few minutes but also provided better results by taking into account all the test cases that might've been missed in the case of manual testing.
>
> During this time he also designed a Test reporting software, a web-based reporting system . . . [that] was critical in improving the turnaround time on the test report and hence improved the quality and overall productivity of the team.
>
> Critical bugs reported by the test software and quick reports improved the quality of the product shipped to the worldwide consumers of [redacted] awarded him for his automation and web based reporting software.

The petitioner submitted information about President Barack Obama's plans to expand broadband Internet infrastructure. This information addresses the national scope of the beneficiary's overall occupation, but does not mention the beneficiary or distinguish him from others in his field.

The director denied the petition on June 25, 2010. The director acknowledged the substantial intrinsic merit of the beneficiary's occupation, but found that the petitioner had not established its national scope or that the "beneficiary's contributions in the field are of such unusual significance that he merits the special benefit of a national interest waiver." The director concluded that the

witness letters "do not specifically address the significance of the beneficiary's individual contributions or how they have resulted in an appreciable improvement in his field of specialty. Consequently, the record lacks convincing evidence that he has otherwise had an impact on the overall field."

On appeal, counsel maintains that the beneficiary's "crucial regression testing work on Internet infrastructure key products is of essential benefit to the nation as a whole, as the nation's critical industries, government agencies, and general economy depend upon the secure and effective functioning of our underlying network infrastructure." The AAO agrees with counsel's assertion. The beneficiary's work is not inherently local or limited in geographic scope. The petitioner is a national corporation with a significant national clientele (the petitioner's annual report refers to "more than 50,000 enterprise customers" across a variety of industries). Therefore, the efforts of individuals heavily involved in product development for the petitioner have national scope.

The national scope of the beneficiary's occupation, however, does not imply that the beneficiary has had or will have greater impact than other qualified workers in that same national-scope occupation. To support the latter conclusion, counsel cites previously submitted evidence, stating:

> [The beneficiary's] exceptional qualifications are reflected in his seven (7) awards granted from [redacted] and letters of reference from four respected experts in the field. . . . The Administrative Appeals Office has found that letters of support mostly from colleagues are sufficient to satisfy the criteria for national interest waiver, when the field is nonresearch and more narrow.

Under the USCIS regulation at 8 C.F.R. § 204.5(k)(3)(ii)(F), recognition of this kind can form part of a claim of exceptional ability in the arts, sciences or business. Because exceptional ability is not, by itself, grounds for a national interest waiver, it necessarily follows that partial evidence of exceptional ability is not automatically strong evidence in favor of granting the waiver. In appropriate instances, USCIS will consider the circumstances under which the beneficiary received the awards or other recognition, but in this instance the record says little about the awards. An in-house award, from an employer to its own employee(s), does not inherently demonstrate that anyone other than that employer considers the rewarded work to be particularly significant. The record also fails to establish how unusual (or routine) such awards are within the employing companies.

To support the assertion about "letters of support mostly from colleagues," counsel cites an unpublished AAO decision from 2003. Counsel has furnished no evidence to establish that the facts of the instant petition are comparable to those in the unpublished decision. While the USCIS regulation at 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The BIA also held, however: "We not only encourage, but require the introduction of

corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as we have done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

In this instance, several witnesses have asserted that the petitioner played a significant role in a particular project, but the record lacks objective evidence to show the importance of the project relative to other efforts undertaken by the petitioner and other comparable companies. The overall size or influence of the petitioning entity does not grant proportional importance to all projects within that company. The witness letters do little more than attest to the beneficiary's professional competence in his chosen field, with no demonstrable indication that the beneficiary stands out from his peers to an extent that would justify the additional benefit of a national interest waiver.

The significance of the beneficiary's individual contributions is not self-evident from the descriptions provided, and it cannot suffice for the petitioner simply to describe those contributions and declare them to be particularly important. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.